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October 28, 2008

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, D.C. 20554

Re: *Notice of Ex Parte Communication,*
WC Docket No. 05-337, CC Docket No. 96-45

Dear Ms. Dortch:

Today, Eric Peterson and I met with Amy Bender, Legal Advisor to Chairman Martin, on behalf of Rural Cellular Association ("RCA") and the Universal Service for America Coalition ("USA Coalition") respectively, to urge the Federal Communications Commission to ensure that universal service support is distributed in a competitively and technologically neutral manner.¹ During the meeting, we discussed the views summarized in the USA Coalition's October 27 submission in the above listed dockets.

During the meeting, we also expressed our respectful but strong opposition to the proposal CTIA made yesterday in a good-faith effort to delay the harm that the proposed radical reform would cause if adopted. Specifically, CTIA offered support for a five-year transition period from the identical support rule that would begin immediately – despite the fact that no replacement mechanism will be in place – to supplant the proposed "actual cost" calculation

¹ The USA Coalition consists of eight of the nation's leading rural providers of wireless services, and is dedicated to advancing regulatory policies that will enable Americans to enjoy the full promise and potential of wireless communications, regardless of where they live and work. The members of the USA Coalition include Carolina West Wireless, MTPCS, LLC d/b/a Cellular One, Cellular South, Corr Wireless Communications, Mobi PCS, SouthernLINC Wireless, Thumb Cellular LLC and US Cellular.

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requirement that would cause the immediate loss of support for most, if not all, wireless carriers.² Although the USA Coalition strongly supports a transition period of a minimum of five-years, the period should begin only after the replacement mechanism is in place. For this reason, the USA Coalition does not support the “phase-out” proposal of CTIA. Although the CTIA proposal would phase-in the harm, which is a significant improvement over the immediate and total harm the Commission is considering, the radical reform would still be fundamentally inconsistent with the Act and contrary to the public interest.

In addition to the CTIA proposal and the issues outlined in the attached filing, we discussed the following points:

- In light of the manner in which wireless broadband is provided as a technical matter, the requirement that wireless ETCs provide broadband services to 20% of subscribers in a study area in the first year is the equivalent of mandating 100% broadband coverage in the first year, which is not feasible for most, if not all, wireless ETCs.
- It would be technologically and competitively discriminatory to permit only the incumbent LEC to receive full support without complying with the broadband requirement where no qualifying ETCs can meet the broadband requirement and no ETCs participated in a reverse auction.
- All ETCs are currently required to comply with carrier of last resort obligations in their service area, and thus the fact that an incumbent ETC also must comply does not justify permitting only the incumbent ETC to receive support.
- The lack of transparency in this proceeding is creating significant harm for the communications sector.
- Further comment on the proposed hybrid contribution methodology is needed in light of the serious questions that parties have raised about the proposal.³

² The intent of the “actual cost” calculation requirement – which would prohibit wireless carriers from including spectrum costs in their calculation and require them to divide the remaining costs by the incumbent ETC’s line count – is to make it difficult, if not impossible, for wireless ETCs to participate in the universal service program.

³ See, e.g., Ex Parte Letter from Todd D. Daubert, Counsel for NuVox, to Chairman Kevin J. Martin, *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45 (filed Oct. 8, 2008); Ex Parte

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Finally, we urged the Commission to request further comment on universal service reform rather than adopting an order on November 4. The Commission is under no deadline to adopt universal service reform by November 4. Under the Act, the deadline for Commission action on the Joint Board Recommendations is November 21.⁴ However, the USA Coalition supports the Motion for Public Comment on Universal Service and Intercarrier Compensation Reform put forth by the National Association of Regulatory Utility Commissioners ("NARUC").⁵ The extension will allow these state Joint Board members (as well as the others) the opportunity to "participate in the [Commission's] deliberations" as required by section 410(c) of the Act.⁶ Moreover, as noted by NARUC, three of the four state commission Joint Board members have asked for this extension by signing onto NARUC's Motion, and the National Association of State Utility Consumer Advocates, which nominates the fifth State member to the Joint Board, has already filed in support of NARUC's Motion.⁷ To the extent the Commission has any doubt about its authority to grant the NARUC Motion, the Commission could reject the current recommendation and, to the extent necessary, request preparation of a Joint Board recommendation on the specific reform measures the Commission currently is considering.

Letter from Todd Daubert, Counsel for Broadview Networks, Cavalier Communications, NuVox, and XO Communications, to Chairman Kevin J. Martin, Commissioner Michael J. Copps, Commissioner Jonathan S. Adelstein, Commissioner Deborah Taylor Tate and Commissioner Robert M. McDowell, *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45 (filed October 24, 2008).

⁴ 47 U.S.C. § 254(a)(2) (requiring the Commission to "complete" proceedings on Joint Board Recommendations with one year of receipt).

⁵ NARUC Motion for Public Comment, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the ESP Exemption*, CC Docket No. 08-152, *IP-Enabled Services*, WC Docket No. 04-36, *Universal Service Contribution Methodology*, WC Docket No. 06-122, *Petition for Declaratory Ruling Filed by CTIA*, WT Docket No. 05-194, *Jurisdictional Separations & Referral to the Federal-State Joint Board*, CC Docket No. 80-286 (filed Oct. 21, 2008).

⁶ *Id.*

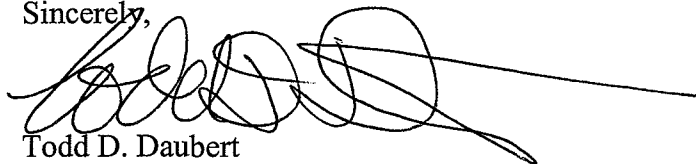
⁷ NARUC Ex Parte Letter, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the ESP Exemption*, CC Docket No. 08-152, *IP-Enabled Services*, WC Docket No. 04-36, *Universal Service Contribution Methodology*, WC Docket No. 06-122, *Petition for Declaratory Ruling Filed by CTIA*, WT Docket No. 05-194, *Jurisdictional Separations & Referral to the Federal-State Joint Board*, CC Docket No. 80-286 (filed Oct. 24, 2008).

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Pursuant to Section 1.1206(b) of the Commission's rules, a copy of this letter is being filed via ECFS with your office. Please contact the undersigned if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Todd D. Daubert', with a long horizontal line extending to the right.

Todd D. Daubert

Counsel for the USA Coalition

cc: Kevin Martin
Jonathan S. Adelstein
Michael J. Copps
Robert M. McDowell
Deborah Taylor Tate
Nicholas Alexander
Amy Bender
Scott Bergmann
Scott Deutchman
Greg Orlando